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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

SHAWN EVELYN, individually and on) Case No.  
 behalf of all others similarly situated, )

Plaintiff, )

vs. )

WYNDHAM VACATION RESORTS, )  
 INC.; DOES 1-100, AND EACH OF )  
 THEM, )

Defendant(s). )

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS  
 OF:**

1. NEGLIGENT VIOLATIONS  
 OF THE TELEPHONE  
 CONSUMER PROTECTION  
 ACT [47 U.S.C. §227 ET  
 SEQ.]
2. WILLFUL VIOLATIONS  
 OF THE TELEPHONE  
 CONSUMER PROTECTION  
 ACT [47 U.S.C. §227 ET  
 SEQ.]

**DEMAND FOR JURY TRIAL**

Plaintiff SHAWN EVELYN (“Plaintiff”), individually and on behalf of all  
 others similarly situated, alleges the following upon information and belief based  
 upon personal knowledge:

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others  
3 similarly situated seeking damages and any other available legal or equitable  
4 remedies resulting from the illegal actions of SYSTEM SERVICES  
5 TECHNOLOGIES, INC. (“Defendant”) in negligently, knowingly, and/or  
6 willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the  
7 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby  
8 invading Plaintiff’s privacy.

9 **JURISDICTION & VENUE**

10 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
11 a resident of California, seeks relief on behalf of a Class, which will result in at  
12 least one class member belonging to a different state than that of Defendant, a  
13 company with its principal place of business and State of Incorporation in  
14 Delaware state. Plaintiff also seeks up to \$1,500.00 in damages for each call in  
15 violation of the TCPA, which, when aggregated among a proposed class in the  
16 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
17 Therefore, both diversity jurisdiction and the damages threshold under the Class  
18 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has  
19 jurisdiction.

20 3. Venue is proper in the United States District Court for the Central  
21 District of California pursuant to 18 U.S.C. § 1391(b) and because Defendant  
22 does business within the state of California and the Central District of California.

23 **PARTIES**

24 4. Plaintiff, SHAWN EVELYN (“Plaintiff”), is a natural person  
25 residing in Los Angeles, California and is a “person” as defined by 47 U.S.C. §  
26 153 (39).

27 5. Defendant, WYNDHAM VACATION RESORTS, INC.  
28 (“Defendant”), is a company involved in vacation resorts and debt

1 recovery/collection and is a “person” as defined by *47 U.S.C. § 153 (39)*.

## 2 **FACTUAL ALLEGATIONS**

3 6. Beginning in and around June of 2016, Defendant contacted Plaintiff  
4 on his cellular telephone, ending in -4111, in an attempt to collect an alleged  
5 outstanding debt.

6 7. Defendant often left voicemail messages on Plaintiff’s cellular  
7 telephone if Plaintiff did not answer Defendant’s calls. In these messages,  
8 Defendant utilized an “artificial or prerecorded voice” as prohibited by *47 U.S.C.*  
9 *§ 227(b)(1)(A)*.

10 8. Defendant used an “automatic telephone dialing system,” as defined  
11 by *47 U.S.C. § 227(a)(1)* to place its daily calls to Plaintiff seeking to collect the  
12 debt allegedly owed.

13 9. Defendant’s calls constituted calls that were not for emergency  
14 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

15 10. Defendant’s calls were placed to telephone number assigned to a  
16 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
17 pursuant to *47 U.S.C. § 227(b)(1)*.

18 11. Accordingly, Defendant never received Plaintiff’s “prior express  
19 consent” to receive calls using an automatic telephone dialing system or an  
20 artificial or prerecorded voice on her cellular telephone pursuant to *47 U.S.C. §*  
21 *227(b)(1)(A)*.

22 12. On or around June 23, 2016, Plaintiff requested that Defendant stop  
23 calling him. Defendant continued to call Plaintiff on multiple occasions.  
24 Furthermore, Defendant often called early in the morning.

## 25 **CLASS ALLEGATIONS**

26 13. Plaintiff brings this action individually and on behalf of all others  
27 similarly situated, as a member of the proposed class (hereafter “The Class”)  
28 defined as follows:

1 All persons within the United States who received any  
2 collection telephone calls from Defendant to said  
3 person's cellular telephone made through the use of any  
4 automatic telephone dialing system or an artificial or  
5 prerecorded voice and such person had not previously  
6 consented to receiving such calls within the four years  
prior to the filing of this Complaint

7 14. Plaintiff represents, and is a member of, The Class, consisting of All  
8 persons within the United States who received any collection telephone calls from  
9 Defendant to said person's cellular telephone made through the use of any  
10 automatic telephone dialing system or an artificial or prerecorded voice and such  
11 person had not previously not provided their cellular telephone number to  
12 Defendant within the four years prior to the filing of this Complaint.

13 15. Defendant, its employees and agents are excluded from The Class.  
14 Plaintiff does not know the number of members in The Class, but believes the  
15 Class members number in the thousands, if not more. Thus, this matter should be  
16 certified as a Class Action to assist in the expeditious litigation of the matter.

17 16. The Class is so numerous that the individual joinder of all of its  
18 members is impractical. While the exact number and identities of The Class  
19 members are unknown to Plaintiff at this time and can only be ascertained  
20 through appropriate discovery, Plaintiff is informed and believes and thereon  
21 alleges that The Class includes thousands of members. Plaintiff alleges that The  
22 Class members may be ascertained by the records maintained by Defendant.

23 17. Plaintiff and members of The Class were harmed by the acts of  
24 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
25 and Class members via their cellular telephones thereby causing Plaintiff and  
26 Class members to incur certain charges or reduced telephone time for which  
27 Plaintiff and Class members had previously paid by having to retrieve or  
28 administer messages left by Defendant during those illegal calls, and invading the

1 privacy of said Plaintiff and Class members.

2 18. Common questions of fact and law exist as to all members of The  
3 Class which predominate over any questions affecting only individual members  
4 of The Class. These common legal and factual questions, which do not vary  
5 between Class members, and which may be determined without reference to the  
6 individual circumstances of any Class members, include, but are not limited to,  
7 the following:

- 8 a. Whether, within the four years prior to the filing of this  
9 Complaint, Defendant made any collection call (other than a  
10 call made for emergency purposes or made with the prior  
11 express consent of the called party) to a Class member using  
12 any automatic telephone dialing system or any artificial or  
13 prerecorded voice to any telephone number assigned to a  
14 cellular telephone service;
- 15 b. Whether Plaintiff and the Class members were damages  
16 thereby, and the extent of damages for such violation; and
- 17 c. Whether Defendant should be enjoined from engaging in such  
18 conduct in the future.

19 19. As a person that received numerous collection calls from Defendant  
20 using an automatic telephone dialing system or an artificial or prerecorded voice,  
21 without Plaintiff's prior express consent, Plaintiff is asserting claims that are  
22 typical of The Class.

23 20. Plaintiff will fairly and adequately protect the interests of the  
24 members of The Class. Plaintiff has retained attorneys experienced in the  
25 prosecution of class actions.

26 21. A class action is superior to other available methods of fair and  
27 efficient adjudication of this controversy, since individual litigation of the claims  
28 of all Class members is impracticable. Even if every Class member could afford

individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

22. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

23. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the California Class as a whole.

### **FIRST CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

#### **47 U.S.C. §227 et seq.**

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-24.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

26. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

1 27. Plaintiff and the Class members are also entitled to and seek  
2 injunctive relief prohibiting such conduct in the future.

3 **SECOND CAUSE OF ACTION**

4 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
5 **Act**

6 **47 U.S.C. §227 et seq.**

7 28. Plaintiff repeats and incorporates by reference into this cause of  
8 action the allegations set forth above at Paragraphs 1-24.

9 29. The foregoing acts and omissions of Defendant constitute numerous  
10 and multiple knowing and/or willful violations of the TCPA, including but not  
11 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*  
12 *seq.*

13 30. As a result of Defendant's knowing and/or willful violations of *47*  
14 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of  
15 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*  
16 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

17 31. Plaintiff and the Class members are also entitled to and seek  
18 injunctive relief prohibiting such conduct in the future.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

21 **FIRST CAUSE OF ACTION**

22 **Negligent Violations of the Telephone Consumer Protection Act**

23 **47 U.S.C. §227 et seq.**

- 24 • As a result of Defendant's negligent violations of *47 U.S.C.*  
25 *§227(b)(1)*, Plaintiff and the Class members are entitled to and  
26 request \$500 in statutory damages, for each and every violation,  
27 pursuant to *47 U.S.C. 227(b)(3)(B)*.  
28 • Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

32. Plaintiff hereby requests a trial by jury pursuant to his rights under the Seventh Amendment of the United States Constitution.

Respectfully Submitted this 16<sup>th</sup> day of January, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
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